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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re the Application of: **Yasushige NAKAMURA et al.** Group Art Unit: **1756**

Serial Number: **09/935,668** Examiner: **Janis L. Dote**

Filed: **August 24, 2001** Confirmation Number: **1050**

For: **IMAGING COLOR TONER, COLOR IMAGE FORMING METHOD AND COLOR IMAGE FORMING APPARATUS**

Attorney Docket Number: **011071**
Customer Number: **38834**

SUBMISSION OF SUPPLEMENTAL APPEAL BRIEF

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

June 21, 2006

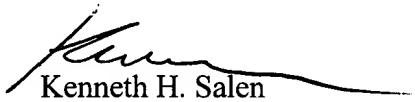
Sir:

In response to a Notice of Non-Compliant Appeal Brief dated June 9, 2006, Applicants submit herewith a Supplemental Appeal Brief.

If any fees are due in connection with this submission, please charge our Deposit Account No. 50-2866.

Respectfully submitted,

WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP



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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

SUPPLEMENTAL APPEAL BRIEF FOR THE APPELLANT

Ex parte **Yasushige NAKAMURA et al.**

IMAGING COLOR TONER, COLOR IMAGE FORMING METHOD AND COLOR IMAGE FORMING APPARATUS

Serial Number: **09/935,668**

Filed: **August 24, 2001**

Appeal No.:

Group Art Unit: **1756**

Examiner: **Janis L. Dote**

Submitted by:
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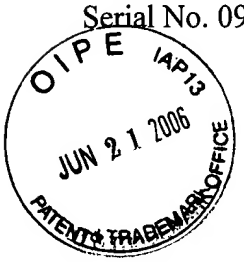
June 21, 2006



BRIEF ON APPEAL

(I) REAL PARTY IN INTEREST

The real party in interest is FUJI XEROX CO., LTD., by an assignment recorded in the U. S. Patent and Trademark Office on March 27, 2003, at Reel 013877, Frame 0741.

(II) RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to appellant, appellant's legal representative, or assignee that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(III) STATUS OF CLAIMS

Pending claims 1, 3-5, 7, 9-11, 13, 14 and 18-22 are rejected, and are herein appealed.

(IV) STATUS OF AMENDMENTS

This Appeal is filed following submission by Appellant of a Request for Continued Examination filed with an Amendment on October 6, 2005. The Amendment was entered and rejected in a Non-Final Office Action dated November 3, 2005. No amendments were filed subsequent to the Non-Final Action. However, Final Office Actions were previously forwarded by the Patent Office dated September 30, 2002, January 12, 2004 and April 7, 2005.

(V) SUMMARY OF CLAIMED SUBJECT MATTER

Rejected claims 1 and claims 3-5 and 18 dependent therefrom are grouped and represented by the independently claimed subject matter of claim 1, which finds support in the specification in the following locations:

Claim	Specification Locations
1. (Previously Presented) An imaging color toner comprising at least a binder resin, a colorant and an infrared absorber, wherein	
the binder resin contains, as a principal component, a polyester resin obtained by mixing a first polyester resin with a second polyester resin in a weight ratio of 80:20 to 20:80;	Page 8, lines 2-5
the first polyester resin is a crosslinked polyester resin having a softening point Tsp of not lower than 120°C and lower than 170°C, and also contains 1 to 25 parts by weight of a chloroform-insoluble content as the component; and	Page 8, lines 6-10 Page 8, lines 17-20 Page 8, lines 32-36
the second polyester resin is a **non-crosslinked polyester resin** having a softening point Tsp of not lower than 80°C and lower than 110°C, wherein the toner is capable of being photofixed; and	**Examples 2-1 –> 2-5** Page 8, lines 25-26
wherein an acid value of the first polyester resin is from 20 to 40, an acid value of the second polyester resin is from 5 to 20, and an acid value of the entire polyester resin is from 15 to 35.	Page 9, lines 11-14

Claims 7 and claims 9 and 10 dependent therefrom are grouped and represented by claim 7, which finds support in the specification in the following locations:

Claim	Specification Locations
7. (Previously Presented) A method of forming a color image on a recording medium which comprises the steps of forming an electrostatic latent image by image exposure, visualizing the electrostatic latent image by development, transferring the visualized image onto the recording medium and fixing the transferred image, wherein	Page 17, line 14 – page 18, line 1
a developing agent comprising a color toner, which comprises at least a binder resin, a colorant and an infrared absorber, is used in the step of developing the electrostatic latent image,	Page 7, lines 26-29
the binder resin containing, as a principal component, a polyester resin obtained by mixing a first polyester resin with a second polyester resin in a weight ratio of 80:20 to 20:80;	Page 8, lines 2-5 Page 9, line 5
the first polyester resin being a crosslinked polyester resin having a softening point Tsp of not lower than 120°C and lower than 170°C, and also containing 1 to 25 parts by weight of a chloroform insoluble content as the component; and	Page 8, lines 6-10 Page 8, lines 17-20 Page 8, lines 32-36
the second polyester resin being a polyester resin having a softening point Tsp of not lower than 80°C and lower than 110°C, said second polyester resin being a polymerization product of polyoxypropylene (2.2)-2, 2-bis (4-hydroxyphenyl) propane, polyoxyethylene (2.2)-2, 2-bis (4-hydroxyphenyl) propane and terephthalic acid **in the absence of a crosslinking component**; and	Page 8, line 11 Page 8, lines 25-26 Page 12, lines 7-19 **Examples 2-1 –> 2-5**
a photofixing system is used at a light emission energy density ranging from 1.0 to 6.0 J/cm^2 in the step of fixing the transferred image after transferring the image visualized by using the developing agent onto the recording medium;	Page 17, lines 25-28
wherein an acid value of the first polyester resin is from 20 to 40, an acid value of the second polyester resin is from 5 to 20, and an acid value of the entire polyester resin is from 15 to 35.	Page 9, lines 11-14

Claims 11 and claims 12 and 13 dependent therefrom are grouped and represented by claim 11, which finds support in the specification in the following locations:

Claim	Specification Locations
11. (Previously Presented) An apparatus for forming a color image on a recording medium comprising an image exposing device for forming an electrostatic latent image, a developing device for visualizing the electrostatic latent image, an image transferring device for transferring the visualized image onto the recording medium, and an imaging fixing device for fixing the transferred image onto the recording medium, wherein	Page 17, line 14 – page 18, line 1
the developing device is loaded with a developing agent containing a color toner, which comprises at least a binder resin, a colorant and an infrared absorber,	
the binder resin containing, as a principal component, a polyester resin obtained by mixing a first polyester resin with a second polyester resin in a weight ratio of 80:20 to 20:80;	Page 8, lines 2-5
the first polyester resin being a crosslinked polyester resin having a softening point Tsp of not lower than 120°C and lower than 170°C, and also containing 1 to 25 parts by weight of a chloroform-insoluble content as the component; and	Page 8, lines 6-10 Page 8, lines 17-20 Page 8, lines 32-36
the second polyester resin being a polyester resin having a softening point Tsp of not lower than 80°C and lower than 110°C, said second polyester resin being a polymerization product of polyoxypropylene (2.2)-2, 2-bis (4-hydroxyphenyl) propane, polyoxyethylene (2.2)-2, 2-bis (4-hydroxyphenyl) propane and terephthalic acid in the **absence of a crosslinking component**; and	**Examples 2-1 –> 2-5** Page 8, lines 25-26 Page 12, lines 7-19
the image fixing device being provided with a photofixing device having a light emission energy density ranging from 1.0 to 6.0 J/cm^2;	Page 17, lines 25-28
wherein an acid value of the first polyester resin is from 20 to 40, an acid value of the second polyester resin is from 5 to 20, and an acid value of the entire polyester resin is from 15 to 35.	Page 9, lines 11-14

Rejected claim 19 is described in the specification in the following locations:

Claim	Specification Locations
19. (Previously Presented) An imaging color toner comprising at least a binder resin, a colorant and an infrared absorber, wherein;	
the binder resin contains, as a principal component, a polyester resin obtained by mixing a first polyester resin with a second polyester resin in a weight ratio of 80:20 to 20:80;	Page 8, lines 2-5
the first polyester resin is a crosslinked polyester resin having a softening point Tsp of not lower than 120 °C and lower than 170 °C, and also contains 1 to 25 parts by weight of a chloroform-insoluble content as the component; and	Page 8, lines 6-10 Page 8, lines 17-20 Page 8, lines 32-36
the second polyester resin is a **non-crosslinked polyester** resin having a softening point Tsp of 110 °C, wherein the toner is capable of being photofixed; and	**Examples 2-1 –> 2-5**
wherein an acid value of the first polyester resin is from 20 to 40, an acid value of the second polyester resin is from 5 to 20, and an acid value of the entire polyester resin is from 15 to 35.	Page 9, lines 11-14

Claims 20 and claim 21 dependent therefrom are grouped and represented by claim 20, which finds support in the specification in the following locations:

Claim	Specification Locations
20. (Previously Presented) An imaging color toner comprising at least a binder resin, a colorant and an infrared absorber, wherein;	
the binder resin contains, as a principal component, a polyester resin obtained by mixing a first polyester resin with a second polyester resin in a weight ratio of 80:20 to 20:80;	Page 8, lines 2-5
the first polyester resin is a crosslinked polyester resin having a softening point Tsp of not lower than 120 °C and lower than 170 °C, and also contains 1 to 25 parts by weight of a chloroform-insoluble content as the component; and	Page 8, lines 6-10 Page 8, lines 17-20 Page 8, lines 32-36
the second polyester resin is a linear polyester resin having a softening point Tsp of not lower than 80 °C and lower than 110 °C, wherein the toner is capable of being photofixed;	**Examples 2-1 –> 2-5** Page 8, lines 25-26
and wherein an acid value of the first polyester resin is from 20 to 40, an acid value of the second polyester resin is from 5 to 20, and an acid value of the entire polyester resin is from 15 to 35.	Page 9, lines 11-14

Claim 22 finds support in the specification in the following locations:

Claim	Specification Locations
22. (Previously Presented) An imaging color toner comprising at least a binder resin, a colorant and an infrared absorber, wherein;	
the binder resin contains, as a principal component, a polyester resin obtained by mixing a first polyester resin with a second polyester resin in a weight ratio of 80:20 to 20:80;	Page 8, lines 2-5
the first polyester resin is a crosslinked polyester resin having a softening point Tsp of not lower than 120 °C and lower than 170 °C, and also contains 1 to 25 parts by weight of a chloroform-insoluble content as the component; and	Page 8, lines 6-10 Page 8, lines 17-20 Page 8, lines 32-36
the second polyester resin is a **linear polyester resin** having a softening point Tsp of 110 °C, wherein the toner is capable of being photofixed; and	**Examples 2-1 –> 2-5**
wherein an acid value of the first polyester resin is from 20 to 40, an acid value of the second polyester resin is from 5 to 20, and an acid value of the entire polyester resin is from 15 to 35.	Page 9, lines 11-14

(VI) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1, 3-5, 7, 9-11, 13, 14 and 18-22 are rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement.

The Examiner notes that the originally filed specification only refers to the second polyester as a "non-linear" polyester resin, rather than:

- the "non-crosslinked" or "linear" polyester as recited in claims 1, 3-5 and 18-22, and
- the "second polyester resin being a polymerization product...in the absence of a crosslinking component" as recited in claims 7, 9-11, 13 and 14.

Claims 19 and 22 are rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement.

The Examiner asserts that exemplified second polyester resin 2-4 is the only disclosure of a second polyester resin having a Tsp of 110°C and an acid value as recited in instant claims 19 and 22. The Examiner asserts that the single exemplified species of a linear, non-crosslinked polyester resin 2-4 does not provide an adequate written description of the broad second non-cross-linked polyester resin recited in claim 19 and the linear polyester recited in claim 22. The Examiner concludes that a person having ordinary skill in the art would not have necessarily recognized that the one exemplified species is representative of the entire scope of the broad

second non-crosslinked polyester resin and broad linear polyester resin recited in the instant claims.

(VII) ARGUMENT

With Respect to the Rejection of Claims 1, 3-5, 7, 9-11, 13, 14 and 18-22 Under 35 U.S.C. §112, First Paragraph Due to the Specification Incorrectly Referring To The Second Polyester As A "Non-Linear" Polyester, Appellant Submits That The Limitations Rejected As New Matter Are Not New Matter Because One Skilled In The Art Would Have Not Only Recognized The Existence Of The Error In The Specification, But Also Would Have Recognized The Appropriate Correction.

Claims 1, 3-5, 7, 9-11, 13, 14 and 18-22 are rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement.

The Examiner notes that the originally filed specification only refers to the second polyester as a "non-linear" polyester resin, rather than:

An amendment to correct an obvious error does not constitute new matter where one skilled in the art would not only recognize the existence of error in the specification, but also the appropriate correction. *In re Oda*, 443 F.2d 1200, 170 USPQ 268 (CCPA 1971); Manual of Patent Examining Procedure §2163(I)(B).

Appellant asserts that one skilled in the art at the time of the invention, upon reading the specification, would have recognized the existence of the error in the specification, i.e., that the description of the non-crosslinked polymer as "non-linear" was an error, and would have realized that the correction would have been that the second polymer should have been referred to as "non-crosslinked" (claims 1 and 19) or "linear" (claims 20 and 22). Such understanding would have arisen based on the descriptions in the examples in the specification.

As is well-known in the chemical field, in the preparation of polyesters, when the divalent monomer containing only two reactive (-OH) groups is used in combination with the trivalent monomer containing three reactive (-COOH) groups, i.e., trimellitic acid (crosslinking component), as in the first polyesters of the present invention, the resulting product is a "non-linear" polyester having a "crosslinked" structure. The first polyesters of the present invention are thus crosslinked and non-linear, as properly described in the specification.

However, when only the divalent monomers containing only two reactive (-OH) groups are used as the starting material as in the second polyesters of the present invention, the resulting product is "linear" polyester having a "non-crosslinked" structure, because one monomer contains only two bonding sites. The second polyesters of the present invention are thus clearly non-crosslinked and linear.

The use of divalent monomers is described on page 10, line 32 to page 12, line 30 of the text. The use of the trivalent monomers such as trihydric or polyhydric carboxylic acids and

trihydric or polyhdric alcohols are described on page 11, lines 16 to 22 and page 12, line 31 to page 13, line 1 of the text.

Appellant refers to the Declaration of Dr. Masatoshi Kimura dated August 5, 2003, which indicates that the Declarant, upon reading the specification, both easily recognized that an error was apparent, and also easily recognized what the correct meaning should have been.

In his declaration, Dr Kimura noted that that above facts are apparent for an expert in polymer chemistry. Dr. Kimura noted the above-noted use and non-use of crosslinking agents in the examples in the specification, i.e., Polyesters 2-1 to 2-5 produced by reaction of only divalent monomers, and concluded that the second claimed polyesters are linear polyesters having non-crosslinked and linear structure.

Therefore, Appellant submits that one skilled in the art would realize that the description of the non-crosslinked polymer as "non-linear" was an error, and would realize that the error was in calling the second polymer "non-linear".

The Fact That Not All Of The Examples Are Representative Of All Of The Claimed Limitations Does Not Diminish Their Value In Illustrating The Existing Obvious Error To One Skilled In The Art.

The Examiner asserts that the second resins 2-1, 2-4 and 2-5 do not support the scope of instant claims 1, 7 and 11, because they have Tsp of 70, 110 and 120°C, respectively, which are outside the range of "not lower than 80°C and lower than 110°C" recited in those claims. The

Examiner also submits that the two remaining samples of non-crosslinked polyester resins, 2-2 and 2-3, do not provide an adequate written description of the broad second non-crosslinked polyester resin recited in claims 1, 7 and 11. The Examiner disregards the probative value of the disregarded examples, and concludes that a person having ordinary skill in the art would not necessarily have concluded that the two remaining examples are representative of the entire scope of the broad second non-crosslinked polyester resin recited in the instant claims.

Appellant respectfully disagrees. Appellant notes that ***all*** of the examples 2-1 to 2-5 disclosed in the specification include second polyesters that are linear and non-crosslinked, because they do not include any crosslinking agent. Conversely, none of the examples disclosed in the specification include second polyesters that are non-linear and crosslinked, again because they do not include any crosslinking agent.

All of the Examples are representative of at least portions of the claimed invention, and all of the Examples contribute to the teachings of the specification. Appellant submits that even if one skilled in the art would have recognized only Examples 2-2 and 2-3 as supporting the entire claimed invention, one skilled in the art would by necessity still have looked to all of the examples in the specification, and would have confirmed from all of the examples that the description of the second polyesters as being crosslinked and/or non-linear is erroneous.

With Respect To The Rejection Of Claims 19 and 22 Under 35 U.S.C. §112, First Paragraph Due To The Allegedly Broad Claims Being Insufficiently Supported In The Specification By Narrow Examples, Appellant Submits That The Examiner Is Improperly Ignoring Examples That Support the Claim Limitations.

The Examiner asserts that exemplified second polyester resin 2-4 is the only disclosure of a second polyester resin having both a Tsp of 110°C and an acid value as recited in instant claims 19 and 22. The Examiner concludes that the single exemplified species of a linear, non-crosslinked polyester resin 2-4 does not provide an adequate written description of the broad second non-cross-linked polyester resin recited in claim 19 and the linear polyester recited in claim 22.

The inquiry into whether the description requirement is met must be determined on a case-by-case basis and is a question of fact. *In re Wertheim*, 541 F.2d 257, 262, 191 USPQ 90, 96 (CCPA 1976). There is a strong presumption that an adequate written description of the claimed invention is present when the application is filed. *Wertheim*, 541 F.2d 257, 263, 191 USPQ 90, 97 (CCPA 1976).

Appellant submits that the Examiner is improperly ignoring other exemplified polyesters that provide support for the claimed limitation. Appellant submits that even if the other exemplified polyesters do not fall within the bounds of the claim, they can nevertheless still be seen as supporting the claimed limitation because the claimed limitation falls within the

boundaries of the supported range of Tsp, and does not read on embodiments outside the scope of the description.

Appellant notes that resins 2-1, 2-4 and 2-5 have Tsp of 70, 110 and 120°C, respectively. While resins 2-1 and 2-5 do not exhibit Tsp of exactly 110 °C, Appellant submits that they can be seen as supporting a range of Tsp from about 70 to about 120 °C. Appellant has elected to claim a resin having the exact Tsp of 110 °C, rather than the entire disclosed and supported range of Tsp, but that is Appellant's right according to *Wertheim*.

Because the question of sufficient support is to be decided on a case-by-case basis, and because it can be seen that the claimed limitations are supported by more than merely the single example as asserted by the Examiner, Appellant submits that the claimed limitations are supported by the specification.

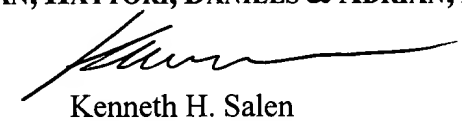
CONCLUSION

Appellant has persuasively demonstrated that the rejections over 35 U.S.C. §112, first paragraph have been overcome. Therefore, any rejection disregarding the limitations previously asserted to be new matter should also be overcome.

If this paper is not timely filed, appellant hereby petitions for an appropriate extension of time. The fee for any such extension and any other fees that may be required to effect consideration of this paper may be charged to Deposit Account No. 50-2866.

Respectfully submitted,

WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP



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VIII. CLAIMS APPENDIX

The claims on appeal are 1, 3-5, 7, 9-11, 13, 14 and 18-22, and read as follows:

1. (Previously Presented) An imaging color toner comprising at least a binder resin, a colorant and an infrared absorber, wherein

the binder resin contains, as a principal component, a polyester resin obtained by mixing a first polyester resin with a second polyester resin in a weight ratio of 80:20 to 20:80;

the first polyester resin is a crosslinked polyester resin having a softening point Tsp of not lower than 120°C and lower than 170°C, and also contains 1 to 25 parts by weight of a chloroform-insoluble content as the component; and

the second polyester resin is a non-crosslinked polyester resin having a softening point Tsp of not lower than 80°C and lower than 110°C, wherein the toner is capable of being photofixed; and

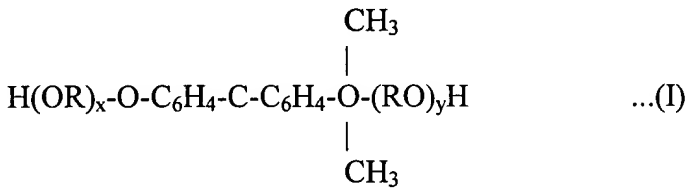
wherein an acid value of the first polyester resin is from 20 to 40, an acid value of the second polyester resin is from 5 to 20, and an acid value of the entire polyester resin is from 15 to 35.

2. (Canceled)

3. (Previously Presented) The imaging color toner according to claim 1, wherein the infrared absorber is a compound which shows a light absorption peak at a wavelength ranging from 700 to 1000 nm.

4. (Original) The imaging color toner according to claim 3, wherein the infrared absorber is at least one compound selected from the group consisting of cyanine, anthaquinone, phthalocyanine, naphthalocyanine, polymethine, nickel complex, aminium, diimonium, tin oxide, ytterbium oxide, ytterbium phosphate, and cerium oxide.

5. (Previously Presented) The imaging color toner according to claim 1, wherein the first polyester resin is a polyester resin originating from an alkylene oxide adduct of bisphenol A represented by the following formula (I):



...(I)

wherein R represents a substituted or unsubstituted alkyl group, and x and y each represents an integer of 1 or more.

6. (Canceled)

7. (Previously Presented) A method of forming a color image on a recording medium which comprises the steps of forming an electrostatic latent image by image exposure, visualizing the electrostatic latent image by development, transferring the visualized image onto the recording medium and fixing the transferred image, wherein

a developing agent comprising a color toner, which comprises at least a binder resin, a colorant and an infrared absorber, is used in the step of developing the electrostatic latent image,

the binder resin containing, as a principal component, a polyester resin obtained by mixing a first polyester resin with a second polyester resin in a weight ratio of 80:20 to 20:80;

the first polyester resin being a crosslinked polyester resin having a softening point Tsp of not lower than 120°C and lower than 170°C, and also containing 1 to 25 parts by weight of a chloroform insoluble content as the component; and

the second polyester resin being a polyester resin having a softening point Tsp of not lower than 80°C and lower than 110°C, said second polyester resin being a polymerization product of polyoxypropylene (2.2)-2, 2-bis (4-hydroxyphenyl) propane, polyoxyethylene (2.2)-2,

2-bis (4-hydroxyphenyl) propane and terephthalic acid in the absence of a crosslinking component; and

a photofixing system is used at a light emission energy density ranging from 1.0 to 6.0 J/cm^2 in the step of fixing the transferred image after transferring the image visualized by using the developing agent onto the recording medium;

wherein an acid value of the first polyester resin is from 20 to 40, an acid value of the second polyester resin is from 5 to 20, and an acid value of the entire polyester resin is from 15 to 35.

8. (Canceled)

9. (Previously Presented) The color image forming method according to claim 7, wherein the infrared absorber is a compound which shows a light absorption peak at a wavelength ranging from 700 to 1000 nm.

10. (Original) The color image forming method according to claim 9, wherein the infrared absorber is at least one compound selected from the group consisting of cyanine, anthaquinone, phthalocyanine, naphthalocyanine, naphthalocyanine, polymethine, nickel complex, aminium, diimonium, tin oxide, ytterbium oxide, ytterbium phosphate, and cerium oxide.

11. (Previously Presented) An apparatus for forming a color image on a recording medium comprising an image exposing device for forming an electrostatic latent image, a developing device for visualizing the electrostatic latent image, an image transferring device for transferring the visualized image onto the recording medium, and an imaging fixing device for fixing the transferred image onto the recording medium, wherein

the developing device is loaded with a developing agent containing a color toner, which comprises at least a binder resin, a colorant and an infrared absorber,

the binder resin containing, as a principal component, a polyester resin obtained by mixing a first polyester resin with a second polyester resin in a weight ratio of 80:20 to 20:80;

the first polyester resin being a crosslinked polyester resin having a softening point Tsp of not lower than 120°C and lower than 170°C, and also containing 1 to 25 parts by weight of a chloroform-insoluble content as the component; and

the second polyester resin being a polyester resin having a softening point Tsp of not lower than 80°C and lower than 110°C, said second polyester resin being a polymerization product of polyoxypropylene (2.2)-2, 2-bis (4-hydroxyphenyl) propane, polyoxyethylene (2.2)-2, 2-bis (4-hydroxyphenyl) propane and terephthalic acid in the absence of a crosslinking component; and

the image fixing device being provided with a photofixing device having a light emission energy density ranging from 1.0 to 6.0 J/cm^2;

wherein an acid value of the first polyester resin is from 20 to 40, an acid value of the second polyester resin is from 5 to 20, and an acid value of the entire polyester resin is from 15 to 35.

12. (Canceled)

13. (Previously Presented) The color image forming apparatus according to claim 11, wherein the infrared absorber is a compound which shows a light absorption peak at a wavelength ranging from 700 to 1000 nm.

14. (Original) The color image forming apparatus according to claim 13, wherein the infrared absorber is at least one compound selected from the group consisting of cyanine, anthaquinone, phthalocyanine, naphthalocyanine, polymethine, nickel complex, aminium, diimonium, tin oxide, ytterbium oxide, ytterbium phosphate, and cerium oxide.

15-17. (Canceled)

18. (Previously Presented) The imaging color toner according to claim 1, wherein said second polyester resin is a polymerization product of polyoxypropylene (2.2) -2, 2-bis (4-hydroxyphenyl) propane, polyoxyethylene (2.2) -2, 2-bis (4-hydroxyphenyl) propane and terephthalic acid in the absence of a crosslinking component.

19. (Previously Presented) An imaging color toner comprising at least a binder resin, a colorant and an infrared absorber, wherein;

the binder resin contains, as a principal component, a polyester resin obtained by mixing a first polyester resin with a second polyester resin in a weight ratio of 80:20 to 20:80;

the first polyester resin is a crosslinked polyester resin having a softening point Tsp of not lower than 120 °C and lower than 170 °C, and also contains 1 to 25 parts by weight of a chloroform-insoluble content as the component; and

the second polyester resin is a non-crosslinked polyester resin having a softening point Tsp of 110 °C, wherein the toner is capable of being photofixed; and

wherein an acid value of the first polyester resin is from 20 to 40, an acid value of the second polyester resin is from 5 to 20, and an acid value of the entire polyester resin is from 15 to 35.

20. (Previously Presented) An imaging color toner comprising at least a binder resin, a colorant and an infrared absorber, wherein;

the binder resin contains, as a principal component, a polyester resin obtained by mixing a first polyester resin with a second polyester resin in a weight ratio of 80:20 to 20:80;

the first polyester resin is a crosslinked polyester resin having a softening point Tsp of not lower than 120 °C and lower than 170 °C, and also contains 1 to 25 parts by weight of a chloroform-insoluble content as the component; and

the second polyester resin is a linear polyester resin having a softening point Tsp of not lower than 80 °C and lower than 110 °C, wherein the toner is capable of being photofixed;

and wherein an acid value of the first polyester resin is from 20 to 40, an acid value of the second polyester resin is from 5 to 20, and an acid value of the entire polyester resin is from 15 to 35.

21. (Previously Presented) The imaging color toner according to claim 20, wherein said second polyester resin is a polymerization product of polyoxypropylene (2.2)-2, 2-bis (4-hydroxyphenyl) propane, polyoxyethylene (2.2) -2,2-bis (4-hydroxyphenyl) propane and terephthalic acid in the absence of a crosslinking component.

22. (Previously Presented) An imaging color toner comprising at least a binder resin, a colorant and an infrared absorber, wherein;

the binder resin contains, as a principal component, a polyester resin obtained by mixing a first polyester resin with a second polyester resin in a weight ratio of 80:20 to 20:80;

the first polyester resin is a crosslinked polyester resin having a softening point Tsp of not lower than 120 °C and lower than 170 °C, and also contains 1 to 25 parts by weight of a chloroform-insoluble content as the component; and

the second polyester resin is a linear polyester resin having a softening point Tsp of 110 °C, wherein the toner is capable of being photofixed; and

wherein an acid value of the first polyester resin is from 20 to 40, an acid value of the second polyester resin is from 5 to 20, and an acid value of the entire polyester resin is from 15 to 35.

IX. EVIDENCE APPENDIX

Declaration of Dr. Masatoshi KIMURA dated August 5, 2003.

Translator's Declaration of Keizo KOMORIYA dated July 25, 2003

(X) RELATED PROCEEDINGS APPENDIX

Not applicable.